



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

39 BAIL APPLICATION NO. 32 OF 2024

NIHAL MAJID KAZI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Mohit R. Deshmukh.

APP for Respondent/State : Mr. Mukesh K. Goyanka.

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 22nd January, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.341 of 2023, registered with Osmanabad Rural Police Station, District Osmanabad, for the offences punishable under Sections 328, 272, 273 and 188 of the Indian Penal Code.

3 It is averred in the report that the applicant carried the banned tobacco worth Rs.3,07,200/- i.e. 16 bags and Rs.76,800/- i.e. 8 bags. All these articles were seized on the spot alongwith Innova car bearing registration No.MH 24 V 1642.

4 The learned counsel for applicant submitted that the applicant is falsely implicated in the crime. He is not owner of that car. He was just driving that car. He has roots in the society. He will not flee away from trial. It is lastly prayed to allow the application.

5 The learned counsel for applicant is relying upon the authority of this Court in the case of *Fasiyoddin Misbahoddin Qazi Vs. The State of Maharashtra, 2021 (3) Mh.L.J. (Cri.) 398*, in which it is held that, mere storage of contraband articles is not sufficient to invite registration of offence under Section 328 of the Indian Penal Code.

6 The learned APP for the State strongly opposed the application and pointed out that the applicant is arrested in serious crime. Considering the quantity of Gutkha seized during investigation, there is possibility of committing similar nature of crime again and again. It is lastly prayed to reject the application.

7 Perused the papers of investigation. The report is lodged by police officer, who seized that vehicle. No doubt the statement of witnesses show that the applicant was driving that car in which the Gutkha was carried, the papers of investigation show that practical investigation is over. The applicant has roots in the society. He will not flee away from trial. Therefore, without adverting into the merits of the case, considering the fact that the applicant is not owner of Innova car

seized by the investigating officer, the application deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

- I. The application is allowed.
- II. The applicant in connection with Crime No.341 of 2023, registered with Osmanabad Rural Police Station, District Osmanabad, for the offences punishable under Sections 328, 272, 273 and 188 of the Indian Penal Code, be released on bail on furnishing personal bond of Rs.1,00,000/- with surety of the like amount on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses.
 - b) The applicant shall not tamper with the prosecution evidence, in any manner.
 - c) The applicant shall not indulge in similar activities again.

8 It is clarified that if the applicant is found while repeating the same nature of crime till conclusion of trial, the investigating officer or the prosecution may apply for cancellation of bail before the Trial Court without reference to this Court.

[SANJAY A. DESHMUKH, J.]